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**NORTH CAROLINA
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IN THIS ISSUE.....

PROPOSED RULES

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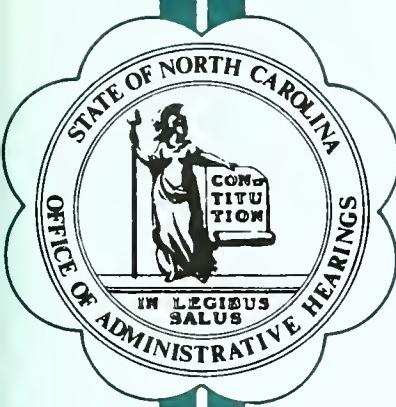
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FINAL RULES

List of Rules Codified

ISSUE DATE: NOVEMBER 1, 1989

Volume 4 • Issue 15 • Pages 766-801



INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published bi-monthly and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed, administrative rules and amendments filed under Chapter 150B must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions. The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues.

Requests for subscriptions to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 11666, Raleigh, N. C. 27604, Attn: *Subscriptions*.

ADOPTION, AMENDMENT, AND REPEAL OF RULES

An agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing; a statement of how public comments may be submitted to the agency either at the hearing or otherwise; the text of the proposed rule or amendment; a reference to the Statutory Authority for the action and the proposed effective date.

The Director of the Office of Administrative Hearings has authority to publish a summary, rather than the full text, of any **amendment** which is considered to be too lengthy. In such case, the full text of the rule containing the proposed amendment will be available for public inspection at the Rules Division of the Office of Administrative Hearings and at the office of the promulgating agency.

Unless a specific statute provides otherwise, at least 30 days must elapse following publication of the proposal in the *North Carolina Register* before the agency may conduct the required public hearing and take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule for approval by the Administrative Rules Review Commission. Upon approval of ARRC, the adopted or amended rule must be filed with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, upon request by the agency, the adopted version will again be published in the *North Carolina Register*.

A rule, or amended rule cannot become effective earlier than the first day of the second calendar month after the adoption is filed with the Office of Administrative Hearings for publication in the NCAC.

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency.

TEMPORARY RULES

Under certain conditions of an emergency nature, some agencies may issue temporary rules. A temporary rule becomes effective when adopted and remains in

effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin normal rule-making procedures on the permanent rule at the same time the temporary rule is adopted.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-63(b).

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 52 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

NOTE

The foregoing is a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Articles 2 and 5 of Chapter 150B of the General Statutes be examined carefully.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. **1:1 NCR 101-201, April 1, 1986** refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

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NORTH CAROLINA REGISTER



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Publication Deadlines and Schedules
(January 1989 - May 1990)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing & Adoption by Agency	* Earliest Effective Date
*****	*****	*****	*****	*****
01/02/89	12/08/88	12/15/88	02/01/89	05/01/89
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02/01/89	01/10/89	01/17/89	03/03/89	06/01/89
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05/01/90	04/09/90	04/17/90	05/31/90	09/01/90
05/15/90	04/24/90	05/01/90	06/14/90	09/01/90

* The "Earliest Effective Date" is computed assuming that the public hearing and adoption occur in the calendar month immediately following the "Issue Date", that the agency files the rule with The Administrative Rules Review Commission by the 20th of the same calendar month and that ARRC approves the rule at the next calendar month meeting.

PROPOSED RULES

TITLE 4 - DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Cemetery Commission intends to amend rule(s) cited as 4 NCAC 5C .0103.

The proposed effective date of this action is March 1, 1990.

The public hearing will be conducted at 10:00 a.m. on December 7, 1989 at Room 2063, Dobbs Building, 430 N. Salisbury Street, Raleigh, NC 27611.

Comment Procedures: Written comments may be sent to the Cemetery Commission, Post Office Box 25249, Raleigh, NC 27611. Requests for opportunities to present oral testimony and a summary of the testimony must be received at this address by December 1, 1989.

CHAPTER 5 - CEMETERY COMMISSION

SUBCHAPTER 5C - LICENSING

SECTION .0100 - CEMETERIES

.0103 CHANGE OF CONTROL

Any entity wishing to purchase or acquire control of an existing cemetery company shall first make written application to the Cemetery Commission on the commission's Application for Change of Control. This form provides space for the name and address of the present and proposed owner, along with the name of the corporation and the name of the cemetery. This form can be obtained by writing:

North Carolina Cemetery Commission
Post Office Box 25249
Raleigh, North Carolina 27611.

This form must be accompanied by a one hundred dollar (\$100.00) filing fee. The commission also requires the following:

- (1) an examination be made to establish compliance to trust fund requirements;
- (2) a signed certificate assuming liabilities of the existing cemetery company;
- (3) a financial statement of the existing cemetery company showing net worth;
- (4) certification by title insurance policy or by certificate of an attorney-at-law that the cemetery land, subject to appropriate acreage requirements, is owned in fee simple, free of all encumbrances;

(5) a financial statement of proposed owner, showing net worth and a statement of the proposed owner's experience in the cemetery business.

No one shall take over the operation of a cemetery company in anticipation of a change of control until all necessary information concerning that change of control has been submitted to the administrator of the Cemetery Commission. No one shall change control of a cemetery company without first obtaining approval of the Cemetery Commission. Once a change of control has been approved by the Cemetery Commission, the change of control must be completed within 90 days of the date of the Cemetery Commission's approval. If the change of control is not completed within 90 days of the date of the Cemetery Commission's approval, then the entity wishing to effect the change of control will be required to make a new application to the Cemetery Commission in accordance with provisions of this Rule. Upon completion of the change of control, the entity requesting the change of control shall notify in writing the Administrator of the Cemetery Commission of the completion.

Statutory Authority G.S. 65-49; 65-53(2); 65-59.

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the Division of Vocational Rehabilitation Services intends to amend rule(s) cited as 10 NCAC 20C .0121, .0201 - .0206, .0304, .0412.

The proposed effective date of this action is March 1, 1990.

The public hearing will be conducted at 10:00 a.m. on December 4, 1989 at Conference Room, Division of Vocational Rehabilitation Services, Haywood Bldg., 805 Ruggles Drive, Dorothea Dix Campus, Raleigh, N.C.

Comment Procedures: Any interested person may present his/her comments at the hearing for a maximum of ten minutes or by submitting a written statement. Any person wishing to make a presentation at the hearing should contact: Jackie Stalnaker, Division of Vocational Rehabilitation Services, P.O. Box 26053, Raleigh, N.C. 27611, (919) 733-3364 by December 1, 1989. The hearing record will remain open for written comments from November 1, 1989 through December 1, 1989. Written comments must be sent to the

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address above and must state the proposed rule or rules to which the comments are addressed. Fiscal information is also available upon request from the same address.

CHAPTER 20 - VOCATIONAL REHABILITATION

SUBCHAPTER 20C - PROGRAM RULES

SECTION .0100 - GENERAL POLICIES

.0121 ADMINISTRATIVE REVIEWS AND FAIR APPEALS

The Division of Vocational Rehabilitation has the policy that an applicant or recipient of vocational rehabilitation services under the state plan for vocational rehabilitation services who is dissatisfied with any action with regard to the furnishing or denial of such services may file a request for an administrative review and re-determination of that action under the provisions of 10 NCAC 20B .0200, Contested Cases, Rule .0201, Opportunity for an Administrative Hearing. Should the individual be dissatisfied with the decisions and findings of the administrative hearing, he will be granted an opportunity for a hearing under the provisions of 10 NCAC 20B, Section .0200, Contested Cases, Rule .0202, Granting a Hearing Request, by contacting the Director:

Division of Vocational Rehabilitation Services
620 North West Street
Post Office Box 26053

Raleigh, North Carolina 27611

Each applicant or recipient of vocational rehabilitation services will be informed of the opportunity available to him under this provision. The Director will make the final determination and decision based on the fair hearing and recommendations of the hearing officer, and will notify in writing the individual registering the dissatisfaction. Agency methods of assuring non-discrimination and opportunity for fair hearings is found in 10 NCAC 20C .0112.

Procedures governing administrative reviews and appeals hearings are codified in Subchapter 20B, Section .0200 of this Chapter.

Authority G.S. 143-545; 143-546; 34 C.F.R. 361.48.

SECTION .0200 - ELIGIBILITY

.0201 ELIGIBILITY; INELIGIBILITY; AND CERTIFICATION

(a) Eligibility for vocational rehabilitation services is based only on:

(1) the presence of a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment; and

(2) a reasonable expectation that vocational rehabilitation services may benefit the individual in terms of employability.

(b) The vocational rehabilitation counselor will prior to, or simultaneously with the acceptance of the handicapped individual for vocational rehabilitation services, determine that that individual meets the criteria of eligibility and will so certify. This certification will become part of the individual's official record. There may also be a certification for extended evaluation to determine rehabilitation potential.

(c) In cases determined to be ineligible by the rehabilitation counselor, the applicant will be notified of the decision and a certificate of ineligibility will become part of the official record. The client will also be advised of his rights and remedies in such decisions.

(d) Eligibility for vocational rehabilitation services is based only upon the criteria specified in 34 C.F.R. 361.31(b). A preliminary diagnostic study that meets the requirements of 34 C.F.R. 361.32 shall be used in order to determine whether an individual is eligible for vocational rehabilitation services or whether an extended evaluation is necessary to make such a determination. The Division does not make interim determinations of eligibility as permitted by 34 C.F.R. 361.31(c).

(e) If an extended evaluation is necessary, it shall meet the requirements of 34 C.F.R. 361.34.

(f) Certification of eligibility, certification for extended evaluation to determine vocational rehabilitation potential, and certification of ineligibility shall meet the requirements of 34 C.F.R. 361.35. The vocational rehabilitation counselor shall make the appropriate certification in writing and include it in the individual's casefolder.

(g) The Code of Federal Regulations adopted by reference in this Rule shall automatically include any later amendments thereto as allowed by G.S. 150B-14(c).

Authority G.S. 143-545; 143-546; 143B-10(j); 150B-14(c); 34 C.F.R. 361.31; 34 C.F.R. 361.32; 34 C.F.R. 361.34; 34 C.F.R. 361.35.

.0202 PROCESSING REFERRALS AND APPLICANTS

(a) The Division of Vocational Rehabilitation Services has established cooperative relationships with all agencies having contact with handicapped persons to promote the Division's casefinding. The agency will remain active in

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these endeavors in all geographic subdivisions of the state to continue to familiarize these agencies and disabled people of the services of the Division.

(b) The Division of Vocational Rehabilitation Services assigns the vocational rehabilitation counselor to a particular geographic area. Each counselor is stationed in a local office or vocational rehabilitation facility within this geographic area. Referrals may be made to the individual counselor, to the local community office, to a vocational rehabilitation facility, or to the state office of vocational rehabilitation services. Ultimately, referrals made to any of these sources will be forwarded to the appropriate counselor for processing. It is the responsibility of the vocational rehabilitation counselor to process the referral as promptly as possible, and to provide a follow-up outcome of referral process report to the referral agency. The state office of vocational rehabilitation services or any local office will receive complaints and inquiries regarding the agency's services.

(c) It is the responsibility of the vocational rehabilitation counselor to contact all referrals felt to be in need of and eligible for vocational rehabilitation services as promptly as possible. Preliminary contact will be made by letter or other means of communications prior to the initial contact by the counselor when possible. It is the duty of the rehabilitation counselor to contact all referrals, and to make a preliminary determination of eligibility, ineligibility, or need for extended evaluation. The Division will utilize all collateral information available from any other cooperating agency in order to assure expeditious and equitable handling of referrals and applications. Determination of eligibility, ineligibility, or need for extended evaluation is a professional decision made by the counselors, and is based on the standard criteria of eligibility and client evaluation. Final determination in unusual cases can be made by the Chief, Program Operations Section, Raleigh, North Carolina.

(a) The Division shall maintain cooperative agreements with other public agencies and shall establish and maintain information and referral programs as specified in the Three-Year State Plan for Vocational Rehabilitation Services under Title I of the Rehabilitation Act of 1973, as amended, covering Fiscal Years 1989, 1990 and 1991. This adoption by reference is made under G.S. 150B-14(c).

(b) Each rehabilitation counselor is assigned to a local office or vocational rehabilitation facility within a particular geographic area. Referrals may be made to the individual counselor, to the local community office, to a vocational rehabili-

tation facility, or to the state office of the Division. Information regarding referrals shall be forwarded to the appropriate counselor for processing. The counselor shall process the information regarding referrals as promptly as possible.

(c) The counselor shall contact all individuals referred and make a preliminary determination of eligibility, ineligibility, or the need for extended evaluation. The Division shall utilize any collateral information available from the cooperating agencies to assure quick and equitable handling of referrals.

Authority G.S. 143-545; 143-546; 143B-10(j); 150B-14(c); 34 C.F.R. 361.19; 34 C.F.R. 361.20; 34 C.F.R. 361.30.

.0203 ORDER OF SELECTION FOR SERVICES

The Division of Vocational Rehabilitation Services cannot and is not furnishing vocational rehabilitation services to all individuals who have applied and have been determined to be eligible or to be in need of extended evaluation of rehabilitation potential to determine eligibility. Therefore, the following order of selection for services will be followed for individuals who in addition to meeting the standard criteria of eligibility are:

- (1) the most severely handicapped, and
- (2) other individuals whose rehabilitation needs are the greatest.

The Division shall follow the order of selection for services specified in the Three-Year State Plan for Vocational Rehabilitation Services Under Title I of the Rehabilitation Act of 1973, as amended, covering Fiscal Years 1989, 1990 and 1991. This adoption by reference is made under G.S. 150B-14(c).

Authority G.S. 143-545; 143-546; 143B-10(j); 150B-14(c); 34 C.F.R. 361.2(b)(2)(iv); 34 C.F.R. 361.36.

.0204 CONSIDERATION OF COMPARABLE SERVICES AND BENEFITS

(a) The Division of Vocational Rehabilitation Services has a policy that the handicapped individual's economic need is considered for determining his participation in the costs of certain vocational rehabilitation services other than the evaluation of rehabilitation potential, counseling, guidance, and referral services, placement, and others outlined below. The economic needs policies are reasonable and are applied uniformly to assure equitable treatment. Services provided during extended evaluation are subject to the same policy. Economic needs test will be applied

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as a consideration for furnishing the following vocational rehabilitation services. (This applies to both accepted and extended evaluation status):

- (1) physical restoration;
- (2) maintenance (other than diagnostic);
- (3) transportation (other than diagnostic);
- (4) tuition, training fees, and training supplies and materials (other than in on the job training, sheltered and vocational workshop tuition, and vocational training, work adjustment training, and training supplies and materials in the Division's operated vocational rehabilitation facilities);
- (5) occupational license;
- (6) tools, equipment, and initial stock (including livestock) and supplies and necessary shelters in connection with the foregoing items;
- (7) services to members of a handicapped individual's family necessary to the adjustment or rehabilitation of the handicapped individual;
- (8) telecommunications, sensory, and other technological aids and devices;
- (9) recruitment and training services to provide new employment opportunities in rehabilitation, health, welfare, public safety, law enforcement and other appropriate public service employment;
- (10) post employment services necessary to assist handicapped individuals to maintain suitable employment (other than those services normally provided without regard to economic needs); and
- (11) other goods and services which can reasonably be expected to benefit a handicapped individual in terms of his employability.

(b) No economic needs test will be applied as a condition for furnishing the following vocational rehabilitation needs:

- (1) evaluation of rehabilitation potential (including diagnostic and related services);
- (2) counseling, guidance, and referral services;
- (3) placement;
- (4) interpreter services for the deaf; and
- (5) on the job training, sheltered and vocational workshop tuition, and vocational training, work adjustment training, and training supplies and materials in the organizational unit operated by vocational rehabilitation facilities.

The Division shall determine whether any comparable services and benefits are available under any other program and utilize those services and benefits as required under 34 C.F.R. 361.47(b).

Authority G.S. 143-545; 143-546; 143B-10(j); 34 C.F.R. 361.19; 34 C.F.R. 361.47(b); 34 C.F.R. 361.56.

.0205 SERVICES COVERED BY OR EXEMPT FROM FINANCIAL NEEDS TEST

(a) The Division of Vocational Rehabilitation Services will consider fully any similar benefits available to the handicapped individual under any other program to meet, in whole or in part, the costs of any vocational rehabilitation services provided to the individual including services provided under extended evaluation, except the following:

- (1) evaluation of rehabilitation potential;
- (2) counseling, guidance, and referral;
- (3) vocational and other training services including personal and vocational adjustment training, books, tools, and other training materials, except for training or training services in institutions of higher education;
- (4) services to members of a handicapped individual's family;
- (5) placement; and
- (6) post employment services necessary to assist handicapped individuals to maintain suitable employment.

(b) The Division of Vocational Rehabilitation Services will consider fully any similar benefits available under any other program to a handicapped individual to meet, in whole or in part, the cost of physical and mental restoration services and maintenance provided to the individual except where such consideration would significantly delay the provision of such services to the individual.

(c) The Division of Vocational Rehabilitation Services will, to the extent that the individual is eligible for such similar benefits, utilize all similar benefits available to the individual insofar as these benefits are adequate and do not interfere with achieving the rehabilitation objective of the individual.

(d) The Division of Vocational Rehabilitation Services in providing vocational rehabilitation services, will make maximum utilization of public and other vocational or technical training facilities or other appropriate resources in the community.

(a) The financial need of a client, as determined by the financial needs test specified in Rule .0206 of this Section, shall apply as a condition for furnishing the following vocational rehabilitation services in both accepted and extended evaluation status:

- (1) physical and mental restoration;

- (2) maintenance (other than for clients in the diagnostic status);
 - (3) transportation (other than for clients in the diagnostic status);
 - (4) occupational license;
 - (5) tools, equipment, and initial stock (including livestock), supplies and necessary shelters in connection with these items;
 - (6) books, training supplies, and materials required for courses in post-secondary educational facilities;
 - (7) services to members of a handicapped individual's family necessary to the adjustment or rehabilitation of the handicapped individual;
 - (8) telecommunications, sensory, and other technological aids and devices;
 - (9) recruiting and training to provide new employment opportunities in rehabilitation, health, welfare, public safety, law enforcement, and other public service employment;
 - (10) post-employment services necessary to assist handicapped individuals in maintaining suitable employment (other than those services in Paragraph (b) of this Rule which are provided without regard to financial need); and
 - (11) other goods and services expected to benefit a handicapped individual in obtaining employment.
- (b) The financial needs test shall not apply as a condition for furnishing the following:
- (1) services exempt from the financial needs test under 34 C.F.R. 361.47;
 - (2) interpreter services for the deaf;
 - (3) tuition for:
 - (A) on-the-job training;
 - (B) sheltered and vocational workshop training;
 - (C) vocational training; and
 - (D) post-secondary education up to the maximum rate charged for the public university system.
 - (4) fees required in post-secondary educational facilities up to the maximum rate charged for the public university system; and
 - (5) training supplies and materials required for training in division-operated facilities and the training programs listed in Paragraphs (b)(3)(A) and (B) of this Rule.
- (c) The Division may grant an exception to the rate for tuition and required fees for post-secondary education specified in Paragraphs (b)(3)(D) and (b)(4) of this Rule when necessary to accommodate the special training needs of certain severely handicapped individuals who

must be enrolled in high-cost, special programs designed for severely physically handicapped students.

Authority G.S. 143-545; 143-546; 143B-10(j); 34 C.F.R. 361.47.

.0206 FINANCIAL NEEDS TEST

The Division of Vocational Rehabilitation Services provides a range of rehabilitation services that are based on the client's individualized needs to individuals who are referred to the Division. The extent to which particular services will be provided will depend upon the specific need of that client for such a service in order for him to become employed. Only those services needed to attain the objective of allowing the individual to go to work will be provided. Certain services are provided without regards to economic need, while other services are provided after considering the client's financial needs and any similar benefits available to the client.

(a) A client's financial need shall be determined by application of the General Assembly's financial eligibility scale for non-medicaid medical programs which sets the limit of net annual income for families of various sizes and by consideration of other available assets that could be used to pay for the cost of rehabilitation services. In applying the General Assembly's financial eligibility scale, the Division shall follow the provisions of this Rule to determine net monthly income and family size.

(b) The time period to be used as the basis for computing net monthly family income is the month in which the individual applies for services. Net monthly family income shall be recomputed at any time there is a change in the family's income.

(c) A client's family shall include the client and the following persons living in the same household as the client if the client is 18 years of age or older and is not being claimed as a dependent by the parents for tax purposes or if the client is less than 18 years of age and is married:

- (1) the client's spouse;
- (2) the client's children under 18 years of age;
- (3) other individuals related to the client by blood, marriage, or adoption if the other individuals have no income; and
- (4) the client's children of any age who are temporarily living away from the household while attending school if they are being claimed as dependents by the client for tax purposes.

(d) A client's family shall include the client and the following persons living in the same household as the client if the client is less than 18 years

of age and is not married or if the client is 18 years of age or older and is being claimed as a dependent by the parents for tax purposes:

- (1) the client's parents, not including step-parents;
 - (2) siblings or half-siblings of the client, but not step-siblings, if the siblings are unmarried and less than 18 years of age;
 - (3) siblings or half-siblings of the client, but not step-siblings, if the siblings are 18 years of age or older and have no income; and
 - (4) other individuals related to the client by blood, marriage, or adoption if the other individuals have no income.
- (e) If a client is 18 years of age or older and is temporarily living away from the permanent home while attending school and is being claimed as a dependent by the parents for tax purposes, the client's family shall be determined according to Paragraph (d) of this Rule.
- (f) In Paragraphs (d)(2) and (3) of this Rule, siblings who are temporarily living away from the household while attending school may be considered as living in the same household if they are being claimed as dependents by their parents for tax purposes and the parents are in the same household as the client.
- (g) Net monthly family income shall be computed by subtracting the deductions allowed in Paragraph (i) of this Rule from the gross monthly family income as computed according to Paragraph (h) of this Rule.

(h) Gross Monthly Family Income.

- (1) Gross monthly family income shall mean the combined cash income received by the client's family from the following sources:
 - (A) wages and salaries;
 - (B) earnings from self-employment;
 - (C) earnings from stocks, bonds, savings accounts, rentals, and all other investments;
 - (D) Social Security benefits and Supplemental Security Income benefits;
 - (E) public assistance benefits;
 - (F) retirement and pension payments;
 - (G) Veterans Administration benefits; and
 - (H) all other sources of cash income.
- (2) If the income received from any of the sources listed in Paragraph (h)(1) of this Rule is not received on a monthly basis, the monthly pro rata share of the most recent receipt of the income shall be included in the computation.
- (3) Gross family income shall not include:
 - (A) income that children may earn from babysitting, lawn mowing, or other miscellaneous tasks;

(B) gifts;

(C) inheritances; or

(D) life insurance proceeds.

(i) Any of the following expenses which are paid by a member of the client's family shall be allowed as deductions in determining net monthly income:

- (1) state, federal, and Social Security taxes and any mandatory deductions for retirement contributions;
- (2) medical and dental payments not covered by a third-party payor;
- (3) health insurance premiums;
- (4) disability related expenses, not covered by a third-party payor, paid for the client or a member of the client's family;
- (5) child care payments up to one hundred and sixty dollars (\$160.00) per child per month for any child in the family unit who is 14 years of age or younger and the parents or other responsible adults are not able to care for the child;
- (6) post-secondary training expenses for family members not to exceed the rate specified in Rule .0205 (b)(3)(D) of this Section; and
- (7) legally mandated payments such as alimony, child support or Social Security paybacks.

(j) In addition to net monthly family income, other assets that are available to the client's family shall be considered in determining a client's financial need. Available assets shall mean cash or property which could be used to pay for the cost of rehabilitation services and shall include:

- (1) cash in checking or savings accounts which exceeds an amount three times the net monthly income allowed for the family size; and
- (2) real property considering the following provisions:
 - (A) Real property, other than the family homesite, shall be considered if the fair market value less encumbrances exceeds twenty-five thousand dollars (\$25,000).
 - (B) The equity shall be determined by subtracting the amount owed on mortgages or liens from the purchase price or the fair market value, whichever is less.
 - (C) The family homesite for the purposes of this Rule shall be defined as the family's principle place of residence and includes:
 - (i) the house and lot plus all buildings on the lot if the residence is in the city; or
 - (ii) the house and the land on which the house is located up to a maximum of

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one acre plus all buildings on the acre if the residence is in a rural area.

- (D) Real property shall be regarded as an available asset to the extent that it can be converted to cash, either by sale or by use as collateral for a loan, in a timely manner to meet the cost of rehabilitation services.
- (k) If the client's family has excess resources in either net monthly family income or available assets, the excess resources shall be applied to the cost of the client's rehabilitation. The counselor shall determine the amounts to be paid and the method of payment. The unit manager shall approve the payment plan.

(l) If there are extenuating circumstances, such as inability to sell property, that prohibit the client's application of part or all of the excess resources toward the cost of rehabilitation, the application of the excess resources toward rehabilitation may be waived for good cause shown upon written approval of the unit manager. Documentation of the particular circumstances shall be provided by the client and shall be maintained in the client's record.

Authority G.S. 143-545; 143-546; 143B-10(j); 34 C.F.R. 361.47.

SECTION .0300 - SERVICES

.0304 VOCATIONAL AND OTHER TRAINING

(a) Vocational and other training services are provided only to those clients declared to be determined eligible for a program of rehabilitation services or for extended evaluation. To determine rehabilitation potential, these services will be provided to those individuals only when they cannot be obtained from other sources and only to the extent necessary to achieve his vocational rehabilitation objective. Training services will be provided to the extent that entry level qualifications of the job, profession, or employment are achieved. Training such training will be provided in accredited public or private facilities, but the Division's funding for tuition and fees will be limited to the amounts specified in Rule .0205 of this Subchapter, which meet acceptable standards of quality. Training services will be provided to these individuals to the degree that the entry level of the job, profession, or employment is achieved.

(b) Economic needs criteria are applied to this range of services except for clients receiving training in a sheltered workshop, agency operated rehabilitation facilities, or in an on-the-job training situation.

Authority G.S. 143-545; 143-546; 143B-10(j); 34 C.F.R. 361.47.

SECTION .0400 - METHODS TO ASSURE NONDISCRIMINATION

.0412 APPEALS

(a) When the individual is dissatisfied with the findings of an administrative review he shall be granted an opportunity for a fair hearing before the State Director for Vocational Rehabilitation Services or his designee.

(b) To insure that individuals will be provided due process of a fair hearing, the state agency establishes the following fair hearing procedures:

- (1) Applicants for or recipients of vocational rehabilitation services shall be advised of their right to opportunities available to them under Title VI A and Title VI B.
- (2) The hearing shall be held at a time and place convenient to the individual requesting a fair hearing. Such individual will be notified in writing as to the time and place of such hearing 10 days in advance. Such individual will also be notified in writing of his right to be represented at the hearing by counsel, or a friend, and to present witnesses if he so desires; and he will be notified 10 days in advance so as to have an adequate opportunity to prepare his case.
- (3) At the hearing, the individual and his representative if he desires to have one, will have an adequate opportunity to present witnesses for cross examination and to present evidence in his behalf.
- (4) The hearing shall be conducted by a supervisory staff member designated as fair hearing officer for the state agency and who has not taken part in the action under consideration. A verbatim transcription shall be made of all testimony given at the hearing, with exhibits, or an official report containing the substance of what transpired at the hearing shall be prepared and made available for review in arriving at the final decision on the case.
- (5) The transcript or official report and exhibits and the hearing officer's recommendations shall constitute the exclusive record of the case and shall be referred to the Director for review and disposition. This record shall be available to the individual at any reasonable time.
- (6) Authority to make a final decision based upon the review of the accumulated testimony, exhibits, and recommendations of the fair hearing officer shall be vested in

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- and exercised by the Director (or his designated appeals board).
- (7) The decision shall set forth in writing the issue, principle, and relevant facts brought out at the hearing, pertinent provisions in law and in agency policy, and the reasoning that led to the final decision on the case. The individual or his designated representative shall be forwarded a copy of the final decision, or shall be advised in writing of the contents of the decision.

Procedures governing appeals are codified in Subchapter 20B, Section .0200 of this Chapter.

Authority G.S. 143-545; 143-546; 34 C.F.R. 361.48.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Human Resources - Social Services intends to amend rule(s) cited as 10 NCAC 4111 .0406 - .0408.

The proposed effective date of this action is March 1, 1990.

The public hearing will be conducted at 10:00 a.m. on December 6, 1989 at Disability Determination Services Bldg., 321 Chapanoke Rd., Raleigh, NC 27603.

Comment Procedures: Any interested person may present his her views and comments either in writing, or orally at the hearing. Any person may request information, permission to be heard or copies of the proposed regulations by writing or calling Donna A. Creech, 325 N. Salisbury Street, Raleigh, NC 27611 (919) 733-3055.

CHAPTER 41 - CHILDREN'S SERVICES

SUBCHAPTER 41II - ADOPTION STANDARDS

SECTION .0400 - ADOPTION ASSISTANCE: GENERAL

.0406 ELIGIBILITY REQUIREMENTS FOR MONTHLY CASH PAYMENTS

(a) Prior to the child's placement into an adoptive home, the following eligibility factors must be determined:

- (1) The child is legally clear for adoption.
- (2) The child is the placement responsibility of a North Carolina agency authorized to place children for adoption.

- (3) The child has special needs that create a financial barrier to adoption.
- (4) Reasonable but unsuccessful efforts have been made to place the child for adoption without the benefits of adoption assistance.
 - (b) The child must be under eighteen years of age.
 - (c) A child's eligibility for monthly cash payments from adoption assistance must be based on one or more of the following factors:
 - (1) The child is a member of a sibling group being placed together.
 - (2) The child could be placed for adoption with a known and approved family, but the circumstances of the family preclude assumption of full financial responsibility for the child.
 - (3) The child has special needs due to a handicapping condition.
 - (4) To be eligible to receive monthly cash payments from adoption assistance under Title IV-E of the Social Security Act, entitled "Federal Payments for Foster Children and Adoption Assistance", the child must be one who at the time adoption proceedings were initiated:
 - (A) is a dependent child who meets the requirements for aid to families with dependent children (AFDC) but for his removal from the home of a specified relative for placement in a foster care facility; or
 - (B) meets the requirements of Title XVI of the Social Security Act with respect to eligibility for supplemental security income benefits.
 - (d) For the child to receive monthly cash payments for which he is eligible, the adoptive parents must enter into an agreement with the child's agency prior to entry of the final order of adoption. The agreement shall set forth the respective responsibilities of the agency and the adoptive parents during the time of the child's eligibility for this assistance.
 - (e) For the child to receive monthly cash payments from adoption assistance, North Carolina residency is not a requirement for the child and adoptive parents.

Statutory Authority G.S. 108A-49; 108A-50; 143B-153.

.0407 ELIGIBILITY REQUIREMENTS FOR VENDOR PAYMENTS

- (a) A child's eligibility for monthly cash payments from adoption assistance shall be based on one or more of the following factors:

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- (1) The child is a member of a sibling group being placed together.
- (2) The child could be placed for adoption with a known and approved family, but the circumstances of the family preclude assumption of full financial responsibility for the child.
- (3) The child has special needs due to a handicapping condition not covered by Medicaid or by vendor payments from adoption assistance to providers of medical or psychological, therapeutic, and remedial services.
- (4) To be eligible to receive monthly cash payments from adoption assistance under Title IV-E of the Social Security Act, entitled "Federal Payments for Foster Care and Adoption Assistance", the child must be one who at the time adoption proceedings are initiated:
 - (A) is a dependent child who meets the requirements for aid to families with dependent children (AFDC) but for his removal from the home of a specified relative for placement in a foster care facility; or
 - (B) meets the requirements of Title XVI of the Social Security Act with respect to eligibility for supplemental security income benefits.
- (5) A child's eligibility for vendor payments from adoption assistance to medical providers and to providers of psychological, therapeutic, and remedial services shall be determined on the basis of documentation of:
 - (1) a known and diagnosed medical, mental, or emotional condition that will require periodic treatment or therapy of a medical or remedial nature; or
 - (2) a potential handicap due to hereditary tendency, congenital problem, birth injury, or other documented high risk factor leading to substantial risk of future disability.
- (6) For the child to receive adoption assistance benefits for which he is eligible, the adoptive parents shall enter into an agreement with the child's agency to indicate the extent to which they desire the child to participate in this benefits program.
- (7) For the child to receive adoption assistance benefits, North Carolina residency is not a requirement for the child and adoptive parents.
- (8) For the child to continue to receive benefits from adoption assistance, the child must be less than eighteen years of age, and the adoptive parents must annually submit documentation to establish:
 - (1) that the child continues to be a member of their family even though perhaps temporarily in a placement away from the home;
 - (2) that they have continued responsibility for the child;
 - (3) that, if applicable, the child continues to be in need of services or treatment for which he or she was initially determined eligible to receive adoption assistance in the form of vendor payments.
 - (4) The adoptive parents are responsible for notifying the child's agency if, for any reason, the child's eligibility for any category of adoption assistance ceases.
 - (5) The child's adoptive parents are expected to utilize resources and benefits other than from adoption assistance that are available or that may become available to the child.
 - (6) The child's record in his agency must contain documentation of the special physical, mental, emotional, or placement needs that create a financial barrier to adoption.
 - (a) Prior to the child's receipt of vendor payments from adoption assistance to medical providers and to providers of psychological, therapeutic, and remedial services, or to providers of legal services, the following eligibility factors must be determined:
 - (1) The child is legally clear for adoption, or must have been legally adopted;
 - (2) The child is, or was, the placement responsibility of a North Carolina agency authorized to place children for adoption at the time of adoptive placement;
 - (3) The child has special needs that create a financial barrier to adoption;
 - (4) Reasonable but unsuccessful efforts have been made to place the child for adoption without the benefits of adoption assistance; or
 - (5) The child's special needs, though pre-existing, are detected only after his placement into an adoptive home.
 - (b) The child must be under eighteen years of age.
 - (c) A child's eligibility for vendor payments from adoption assistance to medical providers and to providers of psychological, therapeutic, and remedial services shall be determined on the basis of documentation of:
 - (1) a known and diagnosed medical, mental, or emotional condition that will require periodic treatment or therapy or a medical or remedial nature; or
 - (2) a potential handicap due to hereditary tendency, congenital problem, birth injury, or other documented high risk factor

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- leading to substantial risk of future disability.
- (d) A child's eligibility for vendor payments from adoption assistance to medical providers and to providers of psychological, therapeutic, and remedial services may be determined at any time during the child's minority if the medical, mental, or emotional condition, congenital problem, birth injury, or other documented problem is determined to have been pre-existing at the time of his placement into an adoptive home.
- (e) Prior to the child's receipt of vendor payment benefits from adoption assistance for which he is eligible, the adoptive parents must enter into an agreement with the child's agency to indicate the extent to which they desire the child to participate in this component of the benefits program. The adoption assistance agreement must be renewed on an annual basis once the child begins to receive benefits so long as the child remains eligible to receive vendor benefits, or as long as the parents wish him to receive these benefits.
- (f) For a child to receive vendor payments from adoption assistance, North Carolina residency is not a requirement for the child and adoptive parents.

Statutory Authority G.S. 108A-49; 108A-50; 143B-153.

.0408 PROCEDURES/REIMBURSEMENT OF ADOPTION ASSISTANCE BENEFITS

(a) Adoption assistance benefits for which the child may be eligible, with the exception of vendor payments for legal fees, will become effective the first month following the month in which the final order of adoption is issued.

(b) Claims from service providers and monthly cash assistance will be reimbursed or provided from adoption assistance funds in accordance with policies established by the division of social services, subject to the following limitations:

- (1) Vendor payments to medical providers and to providers of psychological, therapeutic, and remedial services will be made only for treatment or services given to alleviate or correct those special conditions specified at the time the child was initially declared eligible for that category of adoption assistance, for which the child has been determined eligible to receive benefits.
- (2) Vendor payments will not be made to reimburse providers for the following:
 - (A) routine medical examinations;

- (B) illnesses or conditions not related to or resulting from the conditions for which the child was initially determined eligible for adoption assistance; vendor payments;
- (C) services or treatment provided to the child prior to entry of the final order of adoption; and
- (D) services or treatment that may have been provided on or after the first day of the month following the month in which the child's eligibility ceases.
- (e) No local match, in terms of dollars, is required for funds for those children certified to receive benefits under the State Fund for Adoptive Children with Special Needs for whom the final order of adoption is entered on or before June 30, 1982, or for children who are the placement responsibility of licensed private child-placing agencies with the exception of monthly cash payments for those children who are eligible for benefits from Title IV-E of the Social Security Act.

Statutory Authority G.S. 108A-49; 108A-50; 143B-153.

TITLE 11 - DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Department of Insurance intends to amend rule(s) cited as 11 NCAC 8 .0905.

The proposed effective date of this action is April 1, 1990.

The public hearing will be conducted at 9:30 a.m. on January 16, 1990 at Manufactured Housing Board, 410 Boylan Avenue, Raleigh, N.C. 27611.

Comment Procedures: Written comments may be sent to Owen Tharrington, c/o Manufactured Housing Board, P.O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Owen Tharrington at (919) 733-3901 or Linda Stott at (919) 733-4700.

CHAPTER 8 - ENGINEERING AND BUILDING CODES

SECTION .0900 - MANUFACTURED HOUSING BOARD

.0905 LICENSING

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(a) Any person employed by a dealer whose occupational activity is that of selling on behalf of the retail dealership shall be licensed as a salesperson. Each salesperson's license shall be conspicuously displayed at all times by the dealership employing the salesperson.

(b) A manufactured housing salesperson may be allowed to engage in business during the time period after making application for a license but before such license is granted.

(c) The following shall not be required to be licensed as a manufactured housing dealer:

- (1) Receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under the judgment or order of any court;
- (2) Public officials while performing their official duties;
- (3) Persons disposing of manufactured homes acquired for their own use, provided that said home is not used for the purpose of avoiding the provisions of G.S. 143-143.9;
- (4) Licensed real estate salesmen or brokers who negotiate or sell a manufactured home for any individual who is the owner of not more than three manufactured homes;
- (5) Banks and finance companies who sell repossessed manufactured homes who do not maintain a sales lot or building with one or more employed retail salespersons.

(d) Licenses shall be issued by the board whenever the application is in compliance with the applicable laws and regulations. Such license shall entitle the licensee to conduct the specified business for a period of one year from date of issuance or the first day of July, whichever is earlier. The board may, if it deems necessary, cause an investigation to be made to ascertain if all the requirements set forth in the application are true and shall not issue a license to the applicant until it is satisfied as to the accuracy of the application.

(e) Manufactured housing manufacturers, dealers, and set-up contractors shall conspicuously display their licenses at all times at their place of business.

(f) Whenever a bond is required by G.S. 143-143.12, before any license shall be issued by the board, the applicant shall deliver to the board a corporate surety bond, cash bond or fixed value equivalent. The bond shall be to the board and in favor of any person who shall suffer any loss as a result of any violation of the law or administrative rules governing manufactured housing. The bond shall be for the license period and a new bond or proper continuation certificate shall be delivered to the board at the beginning of each license period. The bond for one type of license

may not be considered as the bond for another type of license.

(g) License fees are as follows:

- (1) two hundred fifty dollars (\$250.00) per Certificate of Origin plant for manufactured housing manufacturers;
- (2) one hundred dollars (\$100.00) per county of operation for manufactured housing dealers;
- (3) fifty dollars (\$50.00) per county for supplemental manufactured housing dealer locations;
- (4) twenty-five dollars (\$25.00) for retail manufactured housing salespersons;
- (5) ~~twenty five dollars (\$25.00) for manufactured housing representatives; and~~
- (5)(6) one hundred dollars (\$100.00) per business location for set-up contractors.

Statutory Authority G.S. 143-143.10; 143-143.11.

TITLE 15 - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Wildlife Resources Commission intends to amend rule(s) cited as 15 NCAC 10B .0114.

The proposed effective date of this action is March 1, 1990.

The public hearing will be conducted at 10:00 a.m. on December 13, 1989 at Third Floor Conference Room, Archdale Building 512 N. Salisbury Street, Raleigh, North Carolina.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from November 28, 1989 to December 28, 1989. Such written comments must be delivered or mailed to the N.C. Wildlife Commission, 512 N. Salisbury St., Raleigh, N.C. 27611.

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10B - HUNTING AND TRAPPING

SECTION .0100 - GENERAL REGULATIONS

.0114 DOG TRAINING AND FIELD TRIALS

PROPOSED RULES

(a) Except as provided in Paragraphs (b) and (c) of this Rule, each person engaged in training a dog or dogs and each active participant in a field trial must have obtained a North Carolina hunting license. The term "active participant" as used herein includes each person who owns or handles dogs, carries a firearm, or is a member of an organized group engaged in the conduct of a field trial, but does not include a person who is observing a field trial incidentally or who has stopped to witness a part of it.

(b) A person serving as judge of a commission-sanctioned field trial and any nonresident participating therein may do so without having a North Carolina license, provided such nonresident has in his possession a valid hunting license issued by the state of his residence. A "commission-sanctioned" field trial is one which, pursuant to a written request from the sponsoring organization, has been officially authorized in writing and scheduled for occurrence by an authorized representative of the Wildlife Resources Commission.

(c) Persons without license may participate in commission-sanctioned field trials for beagles conducted without firearms on private field trial areas which are fenced in accordance with G.S. 113-276(k).

(d) Except as allowed by regulations pertaining to authorized field trials, it is unlawful to carry firearms, axes, saws or climbing irons while training dogs during closed season.

(e) Except as authorized in this Paragraph, no firearms or other hunting weapons may be carried or used during any field trial for foxhounds or any field trial conducted during the closed hunting season for any other species of wildlife serving as the quarry or prey. ~~During a commission sanctioned field trial for bird dogs, firearms using only blank ammunition may be used when the application for and the authorization of the field trial so provide.~~ On a commission-sanctioned field trial for retrievers or bird dogs, shotguns containing live ammunition or firearms using only blank ammunition may be used only when the application for and the authorization of the field trial so provide. No wild waterfowl, quail or pheasant may be used in ~~retriever~~ field trials when shotguns with live ammunition are permitted. All waterfowl, quail and pheasants so used must be obtained from a licensed game bird propagator. Each specimen of waterfowl so obtained shall be marked by one of the methods provided by 50 C.F.R. 21.13. Each pheasant or quail so obtained shall be banded by the propagator prior to delivery with a metal leg band which is imprinted with the number of his propagation li-

cense. The purchaser of such birds shall obtain a copy of the receipt from the propagator showing the date and the number and species of birds purchased. The copy of the receipt shall be available for inspection by any authorized agent of the Wildlife Resources Commission during the time and at the place where the trial is being held.

Authority: G.S. 113-134; 113-273; 113-276; 113-291.1; 113-291.5; 50 C.F.R. 21.13.

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Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Wildlife Resources Commission intends to amend rule(s) cited as 15 NCAC 10F .0340.

The proposed effective date of this action is March 1, 1990.

The public hearing will be conducted at 10:00 a.m. on December 1, 1989 at Room 386, Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from November 16, 1989 to December 15, 1989. Such written comments must be delivered or mailed to the N.C. Wildlife Commission, 512 N. Salisbury Street, Raleigh, N.C. 27611.

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

.0340 CURRITUCK COUNTY

(a) Regulated Areas. This Rule applies to the waters and portion of waters described as follows:

- (1) Bell's Island. The waters contained in all the canals on Bell's Island.
- (2) Intracoastal Waterway. The portion of the Intracoastal Waterway within the "slow speed" zone established by the United States Army Corps of Engineers on both sides of the U.S. Highway 158 bridge at Coinjock.
- (3) Walnut Island Subdivision. The waters in all the canals in the Walnut Island subdivision in the Village of Grandy.

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- (4) Neal's Creek Landing. Those waters of Currituck Sound within 50 yards of Neal's Creek Landing as delineated by appropriate markers.
- (5) Tull's Bay. Those waters of Tull's Creek within 50 yards upstream and 50 yards downstream of Tull's Bay Marina as delineated by appropriate markers.
- (b) Speed Limit. No person shall operate any motorboat or vessel at greater than no-wake speed within any of the regulated areas described in Paragraph (a) of this Rule.
- (c) Placement and Maintenance of Markers. The Board of Commissioners of Currituck County is designated a suitable agency for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Corps of Engineers.

Statutory Authority G.S. 75A-3; 75A-15.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Board of Nursing intends to amend rule(s) cited as 21 NCAC 36 .0109, .0112, .0211, .0218, .0403 - .0405.

The proposed effective date of this action is March 1, 1990.

The public hearing will be conducted at 3:00 p.m. on December 7, 1989 at N.C. Board of Nursing Office, 3724 National Drive, Suite 201, Raleigh, NC 27612.

Comment Procedures: Any person wishing to address the Board relevant to proposed rules should notify the Board by noon on December 6, 1989, register at the door on the day of the hearing, and present the Hearing Office with a written copy of the oral testimony. Oral presentations will be limited to three minutes per speaker. Written comments only should be directed, five days prior to the hearing date, to the N.C. Board of Nursing, P.O. Box 2129, Raleigh, NC 27602.

CHAPTER 36 - BOARD OF NURSING

SECTION .0100 - GENERAL PROVISIONS

.0109 SELECTION AND QUALIFICATIONS OF NURSE MEMBERS

- (a) Vacancies in nurse member positions on the Board that are scheduled to occur during the next

year shall be announced in the December issue of the North Carolina Board of Nursing "Bulletin", which shall be mailed to the address on record for each North Carolina currently licensed nurse on December 1. The "Bulletin" shall include a petition form for nominating a nurse to the Board and information on filing the petition with the Board.

(b) Each petition shall be checked with the records of the Board to validate that the nominee and each petitioner hold a current North Carolina license to practice nursing. If the nominee is found to be not currently licensed, the petition shall be declared invalid. If any petitioners are found to be not currently licensed and this finding decreases the number of petitioners to less than ten, the petition shall be declared invalid.

(c) On a form provided by the Board, each nominee shall indicate the category for which ~~she/he~~ nominee is seeking election, shall attest to meeting the qualifications specified in G.S. 90-171.21(d) and shall provide written permission to ~~have her/his name entered~~ be listed on the ballot. The form must be returned on or before ~~June 15~~ April 15.

(d) The majority of employment income of registered nurse members of the Board, must be earned by holding positions of primary responsibility as specified in G.S. 90-171.21(d). The following definitions apply in determining qualifications for registered nurse categories of membership:

- (+) "Community health nurses" includes nurses who function as generalists and those who function as specialists in areas including, but not limited to, public health, school or college health, occupational health, and community mental health.
- (2) "Nursing education" includes programs preparing persons for licensure as a nurse, continuing education for nurses, inservice or staff education, and graduate education in nursing.
- (1) Nurse Educator includes any nurse who teaches in or directs a basic undergraduate or graduate nursing program; who teaches in or directs a continuing education or staff development program for nurses; or prepares unlicensed health care workers.
- (2) Hospital is defined as any facility which has an organized medical staff and which is designed, used, and primarily operated to provide health care, diagnostic and therapeutic services, and continuous nursing to inpatients.

- (3) Hospital Nursing Service Director is any nurse who is the chief executive officer for nursing service.
- (4) Employed by a hospital includes any nurse employed by a hospital.
- (5) Employed by a physician includes any nurse employed by a physician or group of physicians licensed to practice medicine in North Carolina and engaged in private practice.
- (6) Employed by skilled or intermediate care facility includes any nurse employed by a skilled or intermediate care facility.
- (7) Registered nurse approved to perform medical acts includes any nurse approved for practice in North Carolina as a Nurse Practitioner or Certified Nurse Midwife.
- (8) Community health nurse includes any nurse who functions as a generalist or specialist in areas including, but not limited to, public, student, occupational or mental health.

(e) The term "nursing practice" when used in determining qualifications for registered or practical nurse categories of membership, means any position for which the holder of the position is required to hold a current license to practice nursing.

(f) A nominee shall be listed in only one category on the ballot.

(g) If there is no nomination in one of the registered nurse categories, all registered nurses who have been duly nominated and qualified shall be eligible for an at-large registered nurse position. A plurality of votes for the registered nurse not elected to one of the specified categories shall elect that registered nurse to the at-large position.

(h) Separate ballots shall be prepared for election of registered nurse nominees and for election of licensed practical nurse nominees. Nominees shall be listed in alphabetical order on the ballot for licensed practical nurse nominees and within the categories for registered nurse nominees. Ballots shall be accompanied by biographical data on nominees. Ballots shall prescribe the method of voting.

(i) Any nominee may withdraw her his name at any time by written notice prior to the date and hour fixed by the Board as the latest time for return for ballots. Such nominee shall be eliminated from the contest and any votes cast for that nominee shall be disregarded.

(j) On or about ~~August 15~~, June 15, the appropriate ballot and a return official envelope shall be mailed to the address on record for each currently licensed nurse on that date, together with a notice designating the latest day and hour

for return of ballot which shall not be earlier than the tenth day following the mailing.

(k) The Board of Nursing may contract with a computer or other service for receipt of envelopes with ballots and the counting of ballots.

(l) The counting of ballots shall be conducted as follows:

- (1) The certificate number and name of the voter shall be entered on the perforated section of the ballot sheet.
- (2) The certificate number and name of the voter shall be matched with the registration list. In the event that there is not a match, the entire ballot sheet shall be set aside for inspection, validation, or invalidation by the Board of Nursing.
- (3) Those ballots which are not set aside shall have the perforated section completely separated from the ballot portion of the sheet.
- (4) Only official ballots shall be counted.
- (5) A ballot marked for more names than there are positions to be filled shall not be counted for that category but shall be counted for all other categories voted correctly.
- (6) If for any reason it is impossible to determine a voter's choice for a category of nurse, that ballot shall not be counted for that category, but shall be counted for all other categories clearly indicated.
- (7) Ballots identified in (2), (5) and (6) of this Paragraph shall be set aside for inspection and determination by the Board of Nursing.
- (m) A plurality vote shall elect. If more than one person is to be elected in a category, the plurality vote shall be in descending order until the required number has been elected. In any election, if there is a tie vote between nominees, the tie shall be resolved by a draw from the names of nominees who have tied.
- (n) The results of an election shall be recorded in the minutes of the next regular meeting of the Board of Nursing following the election and shall include at least the following:
 - (1) the number of nurses eligible to vote,
 - (2) the number of return ballots set aside and the disposition of same,
 - (3) the number of ballots cast,
 - (4) the number of ballots declared invalid, and
 - (5) the number of votes cast for each person on the ballot.
- (o) The results of the election shall be forwarded to the Governor and the Governor shall commission those elected to the Board of Nursing.

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(p) All petitions to nominate a nurse, signed consents to appear on the ballot, verifications of qualifications, perforated sections of the ballot sheets containing the certificate number and name of the voter, and the ballots shall be preserved for a period of three months following the close of an election.

Statutory Authority G.S. 90-171.21; 90-171.23(b).

.0112 DETERMINATION OF VACANCY

(a) Should a registered nurse member of the Board cease to be actively employed (as defined in Rule .0113) in the specified area defined in G.S. 90-171.21(d), which is the basis for the member's eligibility, the member will have 60 days to resume employment in the designated area. If active employment in the specified area is not resumed within 60 days, the seat will be declared vacant and the vacancy filled according to G.S. 90-171.21(c). Provided, however, that if cessation of active employment within the specified area occurs within 90 days of the end of the member's term, such member may continue to serve until the end of the term.

(b) Should a licensed practical nurse member of the Board cease to be actively employed, which is the basis for the member's eligibility, the member will have 60 days to resume employment. If active employment is not resumed within 60 days, the seat will be declared vacant and the vacancy filled according to G.S. 90-171.21(c). Provided however, that if cessation of active employment occurs within 90 days of the end of the member's term, such member may continue to serve until the end of the term.

Statutory Authority G.S. 90-171.21(c); 90-171.23(b).

SECTION .0200 - LICENSURE

.0211 EXAMINATION

(a) An applicant meets the educational qualifications to write the examination for licensure to practice as a registered nurse by:

- (1) graduating from a board approved nursing program designed to prepare a person for registered nurse licensure:
 - (A) applicants graduating before July 1, 1981 have no time restrictions on writing the examination;
 - (B) applicants graduating after July 1, 1981 must write the examination within three years of graduation.
- (2) graduating from a nursing program outside the United States or Canada that is de-

signed to prepare graduates for the equivalent of licensure as a registered nurse, and submitting the certificate issued by the Commission on Graduates of Foreign Nursing Schools as evidence of the required educational qualifications.

(b) An applicant meets the educational qualifications to write the examination for licensure to practice as a licensed practical nurse by:

- (1) graduating from a board approved nursing program designed to prepare a person for practical nurse licensure:
 - (A) applicants graduating before July 1, 1981 have no time restrictions on writing the examination; and
 - (B) applicants graduating after July 1, 1981 must write the examination within three years of graduation.
- (2) graduating from a nursing program outside the United States or Canada that is designed to prepare graduates for the equivalent of licensure as a licensed practical nurse, and submitting evidence of the required educational qualifications; or
- (3) graduating within the past three years from a board approved nursing program designed to prepare graduates for registered nurse licensure, and failing to pass the examination for registered nurse licensure.

(c) ~~(d)~~ An application to the Board of Nursing for examination shall be submitted at least 30 ~~60~~ days prior to the examination. In instances where the 30 day ~~60~~ day deadline cannot be met, the Board may grant an exception upon request from the Director of the nursing educational program in which the applicant is enrolled or from the applicant. An admission card with specific information as to time, date, and place of examination will be mailed to the applicant approximately 14 days prior to the date of the examination.

(d) ~~(e)~~ Those applicants who qualify for examination in accordance with G.S. 90-171.29 will be mailed a Status A temporary license as provided for in G.S. 90-171.33.

(e) ~~Graduates of nursing programs outside the United States and Canada shall submit the certificate issued by the Commission on Graduates of Foreign Nursing Schools as evidence of the required educational qualifications.~~

(e) ~~(d)~~ The examinations for licensure developed by the National Council of State Boards of Nursing, Inc. shall be the examinations for licensure as a registered nurse or as a licensed practical nurse in North Carolina.

- (1) These examinations shall be administered in accordance with the contract between

- the Board of Nursing and the National Council of State Boards of Nursing, Inc.
- (2) The examination for licensure as a registered nurse shall be administered in February and July on dates determined by the National Council of State Boards of Nursing, Inc.
- (3) The examination for licensure as a licensed practical nurse shall be administered in April and October on dates determined by the National Council of State Boards of Nursing, Inc.
- (4) Scores on the examination shall be reported, by mail only, to the individual applicant and to the director of the program from which the applicant was graduated. Aggregate results from the examination may be published by the Board.
- (5) The passing standard score ~~shall be 350 in~~ for each of the five tests comprising the examination for registered nurse licensure, up to and including the February 1982 examination ~~is 350~~. Beginning ~~For the examination offered in July 1982 and up to and including the through~~ July 1988, ~~examination~~, the passing standard score ~~shall be is~~ 1600. ~~for the examination~~ Beginning ~~in~~ February 1989, the passing score ~~shall be for registered nurse licensure~~ is reported as "PASS".
- (6) The passing standard score ~~shall be 350~~ for the examination for practical nurse licensure, up to and including the April 1988 ~~is 350~~. ~~examination~~ Beginning ~~in~~ October 1988, the passing score ~~for practical nurse licensure is~~ shall be reported as "PASS".

(f) Applicants who meet the qualifications for licensure will be issued a certificate of registration and a license to practice nursing for the remainder of the year.

(g) (→) Applicants for North Carolina license may take the examination for licensure developed by the National Council of State Boards of Nursing, Inc. in another jurisdiction of the United States, providing:

- (1) the Board of nursing in that jurisdiction consents to proctor the applicant;
- (2) arrangements are made through the North Carolina Board of Nursing sufficiently in advance of the examination date to meet application requirements in both jurisdictions; and
- (3) the applicant pays any service fee charged by the proctoring Board.

(h) (→) The North Carolina Board of Nursing may proctor an examination upon request of

another state Board of nursing at the regularly scheduled examination sessions if space is available. The applicant shall submit a service fee for such proctoring.

Statutory Authority G.S. 90-171.23(15); 90-171.29; 90-171.30.

.0218 LICENSURE WITHOUT EXAMINATION (BY ENDORSEMENT)

(a) The Board will provide an application form which the applicant who wishes to apply for licensure without examination (by endorsement) must complete in its entirety.

- (1) The applicant for licensure by endorsement as a registered nurse is required to show evidence of:
 - (A) completion of a nursing program approved by the jurisdiction of original licensure;
 - (B) attainment of a standard score equal to or exceeding 350 on each test in the licensing examination developed by the National Council of State Boards of Nursing, Inc. administered prior to July 1982; or a standard score of 1600 on the licensing examination developed by the National Council of State Boards of Nursing, Inc. beginning in July 1982 and up to and including the July 1988 examination; or beginning in February 1989, a score of "PASS". An exception to this requirement is made for the applicant who was registered in the original state prior to September 1956. Such applicant must have attained the score, on each test in the series, which was required by the state issuing the original certificate of registration;
 - (C) mental and physical health necessary to competently practice nursing; and
 - (D) unencumbered active license in original jurisdiction of licensure or another jurisdiction; if the license in the other jurisdiction has been inactive or lapsed for five or more years, the applicant will be subject to requirements for a refresher course as indicated in G.S. 90-171.35 and 90-171.36.
- (2) The applicant for licensure by endorsement as a licensed practical nurse is required to show evidence of:
 - (A) completion of a program in practical nursing approved in the jurisdiction of original licensure or by meeting the requirements as cited in Rule .0211 (b)(3)(4) of this Section. The applicant who was graduated prior to July 1956 will be con-

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- sidered on an individual basis in light of licensure requirements in North Carolina at the time of original licensure;
- (B) achievement of a passing score on the licensing examination developed by the National Council of State Boards of Nursing, Inc. If originally licensed on or after September 1, 1957, and up to and including the April 1988 examination, an applicant for a North Carolina license as a practical nurse on the basis of examination in another state must have attained a standard score equal to or exceeding 350 on the licensure examination. Beginning in October 1988, an applicant must have received a score of "PASS" on the licensure examination. The applicant who was licensed prior to September 1, 1957 in the original jurisdiction will be considered on an individual basis in light of the licensure requirements in North Carolina at the time of original licensure;
- (C) mental and physical health necessary to competently practice nursing; and
- (D) unencumbered active license in original jurisdiction of licensure or another jurisdiction; if the license in the other jurisdiction has been inactive or lapsed for five or more years, the applicant will be subject to requirements for a refresher course as indicated in G.S. 90-171.35 and 90-171.36.

(b) The North Carolina Board of Nursing will require applicants for licensure by endorsement to provide proof of secondary education achievement only if deemed necessary for identification, or other just cause.

(c) Individuals who have been licensed in Canada on the basis of the Canadian Nurses' Association Test Service Examination written in the English language are eligible to apply for registration by endorsement.

(d) A nurse educated and licensed outside the United States of America is eligible for North Carolina licensure by endorsement if the nurse has:

- (1) proof of education as required by the Board or a certificate issued by the Commission on Graduates of Foreign Nursing Schools; and
 - (2) proof of passing the licensing examination developed by the National Council of State Boards of Nursing, Inc. in another jurisdiction.
- (e) When completed application, evidence of current license in another jurisdiction, and fee are received in the Board office, a temporary license is issued to the applicant. Employer references

may be requested to validate competent behavior to practice nursing.

(f) Facts provided by the applicant and the Board of Nursing of original licensure are compared to confirm the identity and validity of the applicant's credentials. Status in other states of current licensure is verified. When eligibility is determined, a certificate of registration and a current license for the remainder of the calendar year are issued.

Statutory Authority G.S. 90-171.23(b);
90-171.33; 90-171.37.

SECTION .0400 - UNLICENSED PERSONNEL: NURSE AIDES

.0403 QUALIFICATIONS

(a) As of January 1, 1990, or consistent with any date amended by the Federal Government, but no later than January 1, 1991, a nursing facility, or and by August 14, 1990 for a home health agency, as mandated by the Omnibus Budget Reconciliation Act of 1987 [P.L. 100-203, 42 U.S.C.S. 1395i-3 (1987)], shall not use any unlicensed individual as a Nurse Aide I, regardless of title, to provide nursing care activities, as identified in Rule .0405(c) of this Section, to clients for longer than the first four months following initial hiring unless:

- (1) the individual has successfully completed, in addition to an orientation program specific to the employing facility, a Board of Nursing approved Level I nurse aide training and competency evaluation program or a Board approved competency evaluation program; and
- (2) the nursing facility or home health agency has inquired of the Board of Nursing as to information in the Nurse Aide Registry concerning the individual and has confirmed with the Board of Nursing that the individual is listed on the Nurse Aide Registry. Nursing facilities may also verify the registration of a Nurse Aide I with the Division of Facility Services.

(b) As of January 1, 1991, a service agency, other than a nursing facility or a home health agency identified in Paragraph (a) of this Rule, shall not use any unlicensed individual as a Nurse Aide I, regardless of title, to provide nursing care activities to clients for longer than the first four months following initial hiring unless:

- (1) the individual has successfully completed, in addition to an orientation program specific to the employing agency, a Board of Nursing approved Level I nurse aide training and competency evaluation pro-

- gram or a Board approved competency evaluation program; and
- (2) the agency has inquired of the Board of Nursing as to information in the Nurse Aide Registry concerning the individual and has confirmed with the Board of Nursing that the individual is listed on the Nurse Aide Registry.
- (c) As of the date that these rules are effective, a service agency, home health agency, or a nursing facility shall not use any unlicensed individual at the Nurse Aide Level II unless:
- (1) the individual has successfully completed, in addition to an orientation program specific to the employing agency, a Board of Nursing approved Level II nurse aide training and competency evaluation program; and
- (2) the agency has inquired of the Board of Nursing as to information in the Nurse Aide Registry concerning the individual and confirms with the Board of Nursing that the individual is listed on the Nurse Aide Registry as a Nurse Aide Level II;
- (3) the nurse aide(s) who performed any Nurse Aide II activity(ies) prior to March 1, 1989, may continue performing such activity(ies) in that agency until March 1, 1992. By March 1, 1992, the individual must successfully complete a Nurse Aide II Training and Competency Evaluation Program and submit a completed application and fee for listing on the Registry. By April 1, 1990 the nurse administrator of each agency must notify the Board of Nursing in writing of the following:
- (A) name of each unlicensed person who had performed prior to March 1, 1989 and continues to perform any Nurse Aide II activity(ies);
- (B) the Nurse Aide II activity(ies) being performed; and
- (C) a plan indicating when each unlicensed person performing Nurse Aide II activity(ies) will complete a Nurse Aide II Training and Competency Evaluation Program and be listed on the Registry. A copy of the notification shall be kept on file at the agency for review by the North Carolina Board of Nursing.
- (d) Registration on the Nurse Aide Registry is not required if the care is performed by clients themselves, their families or significant others, or by caretakers who provide personal care to individuals whose health care needs are incidental to the personal care required.
- Statutory Authority G.S. 90-171.20 (2) (4) (7) d., e., g.; 90-171.43(4); 90-171.55; 42 U.S.C.S. 1395i-3 (1987).*
- .0404 REGISTRATION**
- (a) The Board of Nursing shall maintain a list of nurse aides in the Nurse Aide Registry who are qualified in accordance with the requirements of Rule .0403 of this Section.
- (b) All nurse aides, regardless of working title, employed or assigned in a service agency for the purpose of providing nursing care activities shall, upon successful completion of a nurse aide training and competency evaluation program or a nurse aide competency evaluation program, submit an application to the Board of Nursing for placement on the Nurse Aide Registry. The application shall be submitted with an annual fee. Employers may submit the fee for their nurse aides.
- (c) A nurse aide employed as of January 1, 1990 in a nursing facility or home health agency, as mandated by 42 U.S.C.S. 1395i-3 (1987), shall successfully complete a Board of Nursing approved training and competency evaluation program or a competency evaluation program prior to submitting an application to the Board of Nursing for placement on the Nurse Aide Registry.
- (d) A nurse aide employed in a service agency as of January 1, 1991 shall successfully complete a Board of Nursing approved training and competency evaluation program or an approved competency evaluation program prior to submitting an application to the Board of Nursing for placement on the Nurse Aide Registry.
- (e) Each nurse aide shall renew his/her registration on a biennial basis on forms provided by the Board.
- (f) Any nurse aide who has had a continuous period of 24 months during which no nursing care activities were performed for monetary compensation, shall successfully complete a new training and competency evaluation program and submit an application to be placed on the Nurse Aide Registry.
- (g) The Division of Facility Services, or any other employing agency, is responsible for investigating complaints related to nurse aides. If, following a timely review and investigation of allegations of client neglect or abuse or misappropriation of client property, the agency determines that the nurse aide has neglected or abused the client or misappropriated client property, the agency shall notify the Board of Nursing within ten business days. The investigating agency's findings indicating a nurse aide has neglected or abused a client or misappropriated client prop-

erty shall be available to the public upon inquiry to the Nurse Aide Registry. Any information disclosed concerning such a finding shall include the findings and a statement whether the individual has disputed the findings.

Statutory Authority G.S. 90-171.20 (2) (4) (7) d., e., g.; 90-171.43(4); 90-171.55; 42 U.S.C.S. 1395i-3 (1987).

.0405 APPROVAL OF NURSE AIDE EDUCATION PROGRAMS

(a) The North Carolina Board of Nursing shall approve nurse aide training and competency evaluation programs and nurse aide competency evaluation programs which prepare two levels of nurse aides. Nurse aide training and competency evaluation programs and nurse aide competency evaluation programs may be offered by an individual, agency, or educational institution once the program is approved by the Board.

- (1) Each entity desiring to offer a nurse aide training and competency evaluation program or competency evaluation program shall submit the program for approval at least 60 days prior to offering the program.
- (2) Nurse aide training and competency evaluation programs and competency evaluation programs shall be submitted for reapproval when the program is changed substantially, or at least every two years.
- (3) The Board of Nursing representatives may survey nurse aide training and competency evaluation programs, competency evaluation programs, and associated clinical service agencies to determine the program's compliance with the requirements of the Board.
- (4) The Board of Nursing may approve a nurse aide training and competency evaluation program or nurse aide competency evaluation program which is approved by another state agency, if the Board of Nursing has reviewed the state agency's process and criteria of approval of nurse aide education programs and determines the process and criteria ensure that the Board of Nursing's requirements are met.
- (b) The Board shall identify and publish on an annual basis the minimum course content and minimum hours of instruction for Level I and Level II nurse aide education programs. Level I Nurse Aide education programs shall include a minimum of 75 hours. Level II Nurse Aide education programs shall include a minimum of 80 hours of theory and 80 hours of supervised clinical instruction.

(c) Each Nurse Aide Level I course must include:

- (1) Basic nursing skills;
- (2) Personal care skills;
- (3) Recognition of mental health and social service needs, including, but not limited to, the aging process;
- (4) Basic restorative services;
- (5) Client's rights;
- (6) Body mechanics;
- (7) Nutrition;
- (8) Elimination;
- (9) Safety;
- (10) Communication and documentation;
- (11) Special procedures;
- (12) Roles of members of the health care team.

(d) Each Nurse Aide Level II course must include content identified as appropriate for the Level II Nurse Aide by the Board of Nursing. The Level II Nurse Aide training and competency evaluation program prepares the Nurse Aide II through additional theory and clinical instruction to perform more complex skills as identified by the Board of Nursing as appropriate for unlicensed personnel.

(e) Each competency evaluation program shall include content to verify the knowledge and skills of the nurse aide who successfully completes the course as being comparable for the appropriate level of nurse aide.

(f) The Board shall identify and publish on an annual basis minimum competencies and qualifications for faculty for the Nurse Aide Level I and Level II Training and Competency Evaluation Programs and Competency Evaluation Programs. Each faculty shall:

- (1) hold a current North Carolina license as a registered nurse,
- (2) have had at least two years of direct patient care experience, and
- (3) have demonstrated competency to teach adult learners.

(g) Each nurse aide training and competency evaluation program and each competency evaluation program shall file with the Board such records, data, and reports as may be required by the Board in order to furnish information concerning operation of the program and any individual who successfully completes the program. Programs approved under Rule .0402(b) of this Section shall furnish such information to the Division of Facility Services.

(h) When an approved nurse aide training and competency evaluation program or a competency evaluation program closes, the Board shall be notified in writing by the program or the Division of Facility Services.

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(i) Nursing students currently enrolled in Board of Nursing approved nursing programs desiring registration as a Nurse Aide I or II shall submit:

- (1) An application; and
 - (2) A verification form completed by the nursing program director indicating successful completion of course work equivalent in content and clinical hours as required for a Nurse Aide I or II.
- (ii) Registered nurses and licensed practical nurses who hold current, unencumbered licenses in North Carolina may make application as a Nurse Aide I or II.

Statutory Authority G.S. 90-171.20 (2) (4) (7) d., e., g.; 90-171.43(4); 90-171.55; 42 U.S.C.S. 1395i-3 (1987).

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. State Board of Sanitarian Examiners intends to amend rule(s) cited as 21 NCAC 62 .0407, .0411.

The proposed effective date of this action is March 1, 1990.

The public hearing will be conducted at 10:00 a.m. on December 1, 1989 at Conference Room, Adams Building, Dorothea Dix Campus, Raleigh, N.C.

Comment Procedures: Comments will be received at the public hearing.

CHAPTER 62 - BOARD OF SANITARIAN EXAMINERS

SECTION .0400 - RULES OF OPERATION

.0407 RENEWAL

(f) Registered Sanitarians shall successfully complete the following specified continuing education requirements for renewal:

- (1) A bachelor's or master's graduate of an accredited environmental health program must complete within two years of employment, the NC State University Food Protection short course or one soils workshop approved by the Board;
- (2) The CDC Homestudy Course 3013-G, "Insect and Rodent Control", during the first three years following employment. Successful completion of the CDC Homestudy Course 3013-G prior to em-

ployment or completion of an equivalent course offered by an environmental health degree program accredited by the National Accreditation Council of Environmental Health Curricula meets the requirements for CDC Homestudy Course 3013-G;

- (3) A public health law course during the first four years following employment; and
- (4) After four years of employment, ten instructional class hours of continuing education each year. Continuing education acceptable to the Board includes attendance at district meetings; satisfactory completion of a seminar or short course; successful completion of a course offered by an accredited college or university; or successful completion of any one of the following CDC Homestudy Courses:
(A) -3011-G, "Basic Mathematics in Environmental Health";
(B) -3012-G, "Communicable Disease Control";
(C) -3014-G, "Waterborne Disease Control";
(D) -3015-G, "Environmental Protection";
(E) -3016-G, "Foodborne Disease Control";
(F) -3017-G, "Water Fluoridation";
(G) -3018-G, "Microbial Ecology of Foods";
(H) -3030-G, "Principles of Epidemiology".

Each of the CDC Homestudy Courses may be used only one time to satisfy the ten clock hours of continuing education requirements. Documentation of successful completion of any one of the CDC Homestudy Courses will satisfy the continuing education requirements for the calendar year in which the course is completed.

Statutory Authority G.S. 90A-57; 90A-63.

.0411 SPECIALIZED TRAINING

An applicant for a certificate as a registered sanitarian or renewal as a sanitarian or a sanitarian intern shall complete a course in specialized instruction and training approved by the Board.

(a) An applicant for registration who is a graduate of a bachelor's or master's degree program accredited by the National Accreditation Council for Environmental Health Curricula shall successfully complete the following:

- (1) Orientation and initial field training as soon as possible after employment as a sanitarian intern, but in no case later than

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90 days after employment; orientation and initial field training must be completed at one of the Division of Health Services' recognized orientation and initial field training centers; and

- (2) The Center for Disease Control (CDC) Homestudy Course 3010-G, "Environmental Science", or its equivalent; successful completion of the CDC Homestudy Course 3010-G or its equivalent prior to employment or graduation from an environmental health degree program accredited by the National Accreditation Council for Environmental Health Curricula meets the requirements of this Rule.
- (b) An applicant for registration who is a graduate of a bachelor's program with a minimum of 15 semester hours science shall successfully complete the following:
- (1) Requirements in Paragraphs (a)(1) and (2) of this Rule; and
- (2) The NC State University Food Protection Short course or one soils workshop approved by the Board.

Statutory Authority G.S. 90A-53; 90A-57.

TITLE 25 - OFFICE OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-12 that the OSP/State Personnel Commission intends to amend rule(s) cited as 25 NCAC 1E .1003; 111 .0602, .0604; 1J .0606; and adopt rule(s) cited as 25 NCAC 1J .0613.

The proposed effective date of this action is March 1, 1990.

The public hearing will be conducted at 9:00 a.m. on December 6, 1989 at 101 W. Peace St., Raleigh, N.C. 27612.

Comment Procedures: Interested persons may present statements orally or in writing at the hearing or in writing prior to the hearing by mail addressed to: Drake Maynard, OSP, 116 W. Jones St., Raleigh, N.C. 27612.

CHAPTER 1 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 1E - EMPLOYEE BENEFITS

SECTION .1000 - MISCELLANEOUS LEAVE

.1003 EMPLOYEE PARTICIPATION IN

VOLUNTEER EMERGENCY SERVICES

(a) Agency ~~or department~~ heads are authorized to establish a policy providing time off with pay to employees participating in volunteer emergency and rescue services within a limited area around their work station. Each ~~department~~ agency head is responsible for determining that a bona fide need for such services exist within a given area. A bona fide need should be defined as real or eminent danger to life or property. Each policy should require sufficient proof of the employee's membership in an emergency volunteer organization and that the performance of such emergency services will not be an undue drain on the government activities which would be affected.

(b) Employees are encouraged to use the privilege and opportunity to participate in life giving through blood donorship. Participating employees shall be given reasonable time off with pay for whole blood donation, pheresis procedure or bone marrow transplant.

Statutory Authority G.S. 126-4.

SUBCHAPTER III - RECRUITMENT AND SELECTION

SECTION .0600 - GENERAL PROVISIONS

.0602 POSTING AND ANNOUNCEMENT OF VACANCIES

(b) If the decision is made, initially or at any time a vacancy remains open, to receive applicants from within the overall state government workforce, that vacancy shall be listed with the Office of State Personnel for the purpose of informing current state employees of the opening. Such vacancies shall have an application period of not less than seven work days from the time the listing is received by the Office of State Personnel. Each vacancy for internal posting or listing with the Office of State Personnel will be described in an announcement which includes at minimum the title, salary range, key duties, knowledge and skill requirements, minimum education and experience standard, the application period and the appropriate contact person. Posting requirements shall not apply to:

(5) Vacancies for positions to be filled by chief deputies and chief administrative assistants to elected or appointed department heads; and vacancies for positions to be filled by confidential assistants and confidential secretaries to elected or appointed department heads, chief deputies, or chief administrative assistants.

Statutory Authority G.S. 96-29; 126-4(4); 126-5(d); 126-7.1.

.0604 APPLICANT INFORMATION AND APPLICATION

(b) Applicants applying for a state vacancy must complete and submit a State Application Form (Form PD-107) to the hiring authority. In completing an Application Form, persons subject to registration under the Military Selective Service Act (50 United States Code, Appx Section 453) must certify compliance with such registration requirements to be eligible for State employment, as required by G.S. 143B-421.1. The knowing and willful failure of a subject person to certify compliance when submitting an Application for formal consideration, or to falsely certify compliance, may be grounds for dismissal from employment. It is not necessary for agencies to accept a State Application Form in the absence of an actual vacancy under active recruitment. Agencies may accept resumes, adopt an interest card system, or develop some other method of recording public interest in vacancies which may develop in the future.

Statutory Authority G.S. 96-29; 126-4; 143B-421.1; 50 USC Section 453.

SUBCHAPTER IJ - EMPLOYEE RELATIONS

SECTION .0600 - DISCIPLINARY ACTION: SUSPENSION AND DISMISSAL

.0606 DISMISSAL

Before an employee may be dismissed on the basis of job performance, the following shall occur:

- (2) A pre-dismissal conference shall be held between the person recommending dismissal and the employee. No third parties shall be present at this conference, including attorneys or other representatives. ~~or witnesses~~ Witnesses or security personnel may be present at management's request. The management representative shall give the employee notice including the specific reasons for the proposed dismissal and a brief

summary of the information which management believes supports the proposed dismissal. The employee shall have the right to respond to that notice of proposed dismissal in the conference.

Statutory Authority G.S. 126-4(7a).

.0613 GRIEVABILITY OF DISCIPLINARY ACTIONS

(a) Any disciplinary action which, by law or rule, has the effect of reducing the salary of an employee or of denying to that employee any salary increase otherwise available to State employees generally, shall be considered a contested case as that term is defined in G.S. 150B-2(2).

(b) Every agency and university shall grant access to its internal grievance procedure to non-probationary employees wishing to grieve a disciplinary action described in Paragraph (a) of this Rule.

(c) Every disciplinary action described in Paragraph (a) of this Rule must contain written notification to the employee that the disciplinary action may be grieved through the Department or Agency's internal grievance procedure. Failure to place this notification in a disciplinary action shall cause the period of time available to the employee to file a grievance to be extended until at least 15 calendar days beyond the date the employee first receives written notice of his appeal rights.

(d) This Rule shall not be construed to confer contested case status on disciplinary actions which do not meet the definition set forth in Paragraph (a) of this Rule. This Rule shall not be construed to confer contested case status on any disciplinary action which has the effect, by law or rule, of making the employee who receives the action ineligible for performance-based pay increases. This Rule shall not be construed to confer contested case status on any non-disciplinary action whatsoever, without regard to the effect of that action on an employee's salary or eligibility to receive a salary increase.

Statutory Authority G.S. 126-4; 126-34; 126-35; 150B-2(2).

FINAL RULES

The List of Rules Codified is a listing of rules that were filed to be effective in the month indicated.

Rules filed for publication in the NCAC may not be identical to the proposed text published previously in the Register. Please contact this office if you have any questions.

Adopted rules filed by the Departments of Correction, Revenue and Transportation are published in this section. These departments are not subject to the provisions of G.S. 150B, Article 2 requiring publication in the N.C. Register of proposed rules.

Upon request from the adopting agency, the text of rules will be published in this section.

*Punctuation, typographical and technical changes to rules are incorporated into the List of Rules Codified and are noted as * Correction. These changes do not change the effective date of the rule.*

NORTH CAROLINA ADMINISTRATIVE CODE

LIST OF RULES CODIFIED

NOVEMBER 1989

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ACTION TAKEN

DEPARTMENT OF AGRICULTURE

2	NCAC	9L	.0301 .1901 - .1902 .1904 - .1907 .1910 - .1911 .1912	Amended Amended Amended Amended Repealed
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DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT

4	NCAC	7	.0504 18	Amended Temp. Adopted Expires 03-25-90 .0201 - .0202 .0301 - .0307
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DEPARTMENT OF CORRECTIONS

5	NCAC	2G	.0310	Amended
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DEPARTMENT OF CULTURAL RESOURCES

7	NCAC	4Q	.0102 4S	Amended Amended .0001 - .0009 .0010 12
---	------	----	-------------	--

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9 NCAC 2B Executive Order Number 97
Eff. September 26, 1989

DEPARTMENT OF HUMAN RESOURCES

10	NCAC	1A .0101 - .0104	Repealed
		.0109	Repealed
		.0201 - .0202	Repealed
		.0209 - .0210	Repealed
		.0216	Repealed
		.0218 - .0221	Repealed
		.0301 - .0302	Repealed
	1B	.0101 - .0102	Amended
		.0103	* Correction
		.0105 - .0108	Amended
		.0221	Amended
		.0401 - .0417	Repealed
	1C	.0101	Repealed
		.0601	Repealed
		.0602 - .0603	Amended
		.0604	Repealed
	1D	.0101 - .0104	Repealed
		.0105	Amended
		.0106	Repealed
		.0201 - .0203	Repealed
	1E	.0201	* Correction
	1F	.0101	* Correction
		.0102	Amended
		.0103 - .0104	* Correction
		.0105	Amended
		.0401	Repealed
	1H	.0001 - .0003	* Correction
		.0005 - .0008	* Correction
	1I	.0301 - .0307	Repealed
	1K	.0101	Amended
		.0102	* Correction
		.0103	Repealed
		.0104	Amended
		.0201 - .0203	* Correction
		.0204	Amended
		.0205	* Correction
		.0301 - .0306	Repealed
		.0401	Amended
		.0402	Repealed
		.0501	Repealed
		.0502	Amended
		.0503 - .0505	Repealed
		.0601 - .0602	Amended
		.0701 - .0703	* Correction
		.0801	* Correction
		.0802 - .0805	Repealed
		.0901	Amended
		.0902	* Correction
	1L	.0001	Repealed
		.0002	Amended
		.0003	* Correction
		.0004	Amended
	3A	.0101 - .0103	Repealed

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.0201 - .0202	Repealed
.0204 - .0205	Repealed
.0301 - .0302	Repealed
.0401 - .0402	Repealed
.0501 - .0502	Repealed
.0601 - .0602	Repealed
.0605	Repealed
.0607 - .0610	Repealed
.0801 - .0804	Repealed
.0901 - .0902	Repealed
.1001 - .1002	Repealed
.1101 - .1102	Repealed
.1201 - .1202	Repealed
.1203	* Correction
3B .0101	Amended
.0102 - .0108	Repealed
.0109 - .0110	Adopted
.0201 - .0217	Repealed
.0301	Amended
.0302 - .0308	Repealed
.0309 - .0310	Adopted
.0601 - .0603	Adopted
.0701 - .0704	Adopted
3C .0101	Amended
.0102	* Correction
.0103	Repealed
.0104	Amended
.0105	* Correction
.0106	Amended
.0109	Amended
.0201	* Correction
.0202 - .0203	Amended
.0301 - .0302	Amended
.0305	Amended
.0306	* Correction
.0307	Amended
.0401	Amended
.0403 - .0404	Amended
.0407	Amended
.0501 - .0502	Amended
.0503	* Correction
.0504 - .0505	Amended
.0601 - .0602	Amended
.0603	* Correction
.0604	Amended
.0701 - .0702	Amended
.0704 - .0708	Amended
.0802	Amended
.0803	* Correction
.0804 - .0805	Amended
.0806	Repealed
.0807	Amended
.0901 - .0903	Amended
.0905 - .0912	Amended
.1001 - .1002	Amended
.1005 - .1006	Amended
.1101	Amended
.1204	Amended
.1301 - .1302	Amended

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.1401 - .1403	Amended
.1503	Amended
.1505	Amended
.1507	Amended
.1509	Repealed
.1510	Amended
.1601 - .1602	Amended
3E .0101 - .0112	* Correction
.0201 - .0208	* Correction
.0301 - .0316	* Correction
.0401 - .0402	* Correction
3G .2204	Amended
.2207	Amended
.2209	Repealed
.2213	Amended
.2215	Amended
.2401	* Correction
.2416	* Correction
.2417 - .2418	Amended
.2420	Amended
.2427	* Correction
.2445	* Correction
.2446	Amended
.2706	Amended
.2708 - .2710	Amended
.2905	* Correction
.3102	* Correction
.3107 - .3108	Amended
.3310	* Correction
.3331	* Correction
.3401 - .3402	* Correction
.3403	Amended
.3504	Amended
.3511	Amended
.3517	Amended
3II .0108 - .0109	Amended
.0206	Amended
.0207	* Correction
.0208	Amended
.0211	Amended
.0214	Amended
.0216	Amended
.0219	Amended
.0309	Amended
.0310	* Correction
.0311	Amended
.0313 - .0318	Amended
.0408	Amended
.0505 - .0507	Amended
.0512	Amended
.0515	* Correction
.0605	Amended
.0609	Amended
.0707	Amended
.0812	Amended
.0905 - .0906	Amended
.0908	Amended
.1003 - .1004	Amended
.1008	Amended

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	.1105	Amended
	.1206	Amended
	.1208	Amended
	.1307 - .1308	Amended
	.1406	Amended
	.1407	Repealed
	.1408 - .1410	Amended
3J	.0106	Amended
	.0202	* Correction
	.0204	Amended
	.0303 - .0304	Amended
	.0601	Repealed
	.1101	Amended
	.1104	Amended
	.1901	Amended
	.1903	Repealed
	.2101 - .2102	Amended
	.5201	Amended
	.5401	Amended
	.5905 - .5906	Amended
	.6004	Amended
3L	.0111 - .0112	Amended
	.0205 - .0207	Amended
	.0209 - .0210	Amended
	.0307 - .0313	Amended
	.0419	Amended
	.0421	Amended
	.0506	Amended
	.0605	Amended
3M	.0101	Repealed
	.0106	Repealed
	.0107	* Correction
	.0202 - .0203	Amended
	.0205	Amended
	.0206	Repealed
3O	.0103	Repealed
	.0105	Amended
	.0204	Repealed
	.0305	Amended
	.0308	Amended
	.0705	Amended
3Q	.0101 - .0102	Repealed
	.0103	Amended
	.0201	Amended
	.0202	* Correction
	.0203 - .0204	Amended
	.0301	Amended
	.0305	Amended
	.1301 - .1302	Amended
	.1404	Amended
3R	.0212 - .0213	Amended
	.0303	Amended
	.0307	Amended
	.0408	Amended
	.0409 - .0419	Repealed
	.0420	* Correction
	.0421 - .0422	Repealed
	.1003	Amended
	.1115 - .1120	Amended

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	.1205	Amended
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	.1308 - .1309	Amended
	.1402	Amended
	.1405 - .1409	Amended
	.1713 - .1718	Amended
	.1904 - .1908	Amended
	.2005	Amended
	.2007 - .2008	Amended
	.2106	Amended
	.2108 - .2109	Amended
	.2110 - .2112	Repealed
	.2202	Amended
	.2408 - .2409	Amended
	.2505	Amended
	.2507	Amended
	.2602 - .2603	Amended
	.2605 - .2606	Amended
	.2706	Amended
	.2711	Amended
3T	.0101	* Correction
	.0102	Amended
	.0201	* Correction
	.0202	Amended
	.0203 - .0205	* Correction
	.0206 - .0207	Amended
	.0208	* Correction
	.0301	* Correction
	.0302 - .0303	Amended
	.0401 - .0402	Amended
	.0403	* Correction
	.0501	Amended
	.0502	* Correction
	.0503	Amended
	.0504	* Correction
	.0505	Amended
	.0601	Amended
	.0602	* Correction
	.0701 - .0702	Amended
	.0703	* Correction
	.0801	Amended
	.0802	* Correction
	.0803	Amended
	.0901	Amended
	.0902	* Correction
	.1001	Amended
	.1002	* Correction
3U	.0101	Repealed
	.0102	Amended
	.0205	Amended
	.0302	Amended
	.0403	Amended
	.0506 - .0507	Amended
	.0704	Amended
	.0707 - .0708	Amended
	.0710 - .0711	Amended
	.0713 - .0714	Amended
	.0801 - .0802	Amended
	.0804 - .0806	Amended

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	.0901 - .0903	Amended
	.1001	Amended
	.1401	Amended
	.1501 - .1504	Amended
	.1601	Amended
	.1613	Amended
	.1702 - .1703	Amended
	.1705	Amended
	.1716	* Correction
	.1717	Amended
	.1801	Amended
	.1901	Amended
	.1902	Repealed
	.1904	Amended
	.2001 - .2004	Repealed
	.2006 - .2012	Amended
	.2101	Amended
	.2201	Amended
	.2301 - .2317	Repealed
	.2401	Amended
	.2603	Amended
	.2609	Amended
7A	.0209	Amended
8D	.0204	Amended
10D	.1624	Amended
	.1633	Repealed
	.1638	Amended
	.1640	Amended
10F	.0032	Amended
	.0034	Amended
10I	.0203	Amended
18I	.0114	* Correction
	.0117	* Correction
18J	.0110 - .0114	* Correction
	.0116	* Correction
	.0118	* Correction
	.0212	* Correction
	.0304 - .0311	* Correction
	.0603	* Correction
	.0701	* Correction
	.0708	* Correction
	.0710 - .0711	* Correction
18K	.0263	* Correction
18L	.0107 - .0108	* Correction
	.0331 - .0332	* Correction
	.0428 - .0431	* Correction
	.0504	* Correction
	.0506 - .0510	* Correction
	.0801 - .0803	* Correction
	.0901 - .0902	* Correction
	.1001	* Correction
	.1003	* Correction
	.1101	* Correction
	.1401	* Correction
18M	.0209 - .0211	* Correction
	.0407 - .0408	* Correction
	.0505	* Correction
	.0703	* Correction
	.0705 - .0714	* Correction

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			.0817 - .0818	* Correction
			.0822 - .0823	* Correction
18N		12	.0205 - .0212	* Correction
18O		12	.0518 - .0524	* Correction
18P		12	.0901 - .0903	* Correction
			.1001 - .1004	* Correetion
18Q		12	.0125	* Correetion
			.0127 - .0134	* Correction
			.0805	* Correction
			.0807	* Correetion
			.0809	* Correetion
			.0811	* Correetion
			.0813	* Correction

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11	NCAC	12	.0604	Amended
			.0607	Amended

DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

15	NCAC	2B	.0201 - .0202	* Correetion
			.0211	* Correetion
			.0216	* Correetion
		2D	.0525	* Correetion
		3B	.0402	* Correetion
		3C	.0304	Amended
		7B	.0201 - .0204	Amended
			.0207	Amended
			.0403	Amended
			.0405	Amended
			.0506	Amended
		711	.0208	Amended

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21	NCAC	14L	.0103 - .0104	Repealed
			.0201	Repealed
			.0205 - .0206	Repealed
			.0213	Repealed

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21	NCAC	36	.0401 - .0402	* Correction
			.0403	Temp. Amended
				Expires 04-06-90
			.0404 - .0405	* Correetion

BOARD OF EXAMINERS FOR SPEECH, LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

21	NCAC	64	.0106 - .0107	Adopted
			.0205 - .0207	Adopted
			.0301 - .0304	Amended
			.0305 - .0306	Adopted

OFFICE OF STATE PERSONNEL

25	NCAC	1D	.0518 - .0519	Adopted
			.2201 - .2203	Adopted
		1E	.1007 - .1008	Adopted

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III .0602	Eff. 01-01-90
.0623	Amended
IJ .0606	Amended
	Amended

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The full publication consists of 52 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication are available at one-half the new subscription price.

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